



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

Lee Currey, Director
Water and Science Administration
Maryland Department of the Environment
1800 Washington Blvd.
Baltimore, Maryland 21230

Dear Mr. Currey:

Through programmatic discussions with the Maryland Department of the Environment (MDE) staff, the Environmental Protection Agency (EPA or the Agency) had been informed that MDE is issuing National Pollutant Discharge Elimination System (NPDES) coverage to new permittees under expired general permits. The two general permits include the stormwater Industrial General Permit (12-SW) (expired December 2018) and Construction General Permit (CGP) (expired December 2019). As discussed on our recent calls on April 22 and 28, 2020, this practice is inconsistent with federal regulations as well as the terms and language in the administratively extended general permits issued by MDE.

Federal regulations at 40 C.F.R. §122.46(a) (applicable to states per 40 C.F.R. § 123.25) state that "NPDES permits shall be effective for a fixed term not to exceed five years." Both the Maryland construction and stormwater industrial (12-SW) general permits have exceeded this duration. While the federal regulations allow for administrative extension of expired permits (see 40 C.F.R. §122.6), this continuance applies only to those permittees that have permit coverage or have submitted a timely and complete reapplication for permit coverage prior to the expiration date of the general permit. This is based upon the condition in the regulations that permit coverage may continue if a complete application has been submitted by the permittee but may not have been acted upon in a timely manner by the permitting authority. While coverage for existing permittees who submitted timely and complete applications prior to the expiration of the general permits is administratively continued, new applicants may not obtain NPDES coverage under an expired general permit.

During our April 2020 virtual meetings and conference calls EPA and MDE discussed options that MDE may consider for applicants seeking coverage under both general permits until they are reissued. Additionally, MDE has committed to accelerate its schedule for general permit reissuance. A revised draft permit package for the CGP that addresses EPA comments is expected to be submitted by May 4, 2020, and MDE has committed to provide a draft permit package for the industrial stormwater general permit (12-SW) to EPA for review by July 15, 2020.



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In order to meet both the federal and state requirements for permit reissuance, in response to this letter, please provide the detailed strategy to manage the universe of applicants seeking coverage following expiration of both permits and the schedule for reissuance.

EPA is committed to continue working with MDE to expedite this process. Please contact me if you have any questions or have your staff contact Michelle Price-Fay, Chief of the Clean Water Branch at 215-814-3397.

Sincerely,

Libertz,
Catherine

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Catherine A. Libertz, Director
Water Division